

Senate Bill 328

By: Senators Heath of the 31st, Schaefer of the 50th and Murphy of the 27th

AS PASSED

AN ACT

To amend Chapter 2 of Title 47 of the Official Code of Georgia Annotated, relating to the Employees' Retirement System of Georgia, so as to provide for retirement provisions applicable to persons who first or again become members on or after January 1, 2009; to provide a short title; to provide for a service retirement allowance; to provide for employee and employer contributions; to provide for an option of coverage for current members; to provide for a calculation of benefits; to provide for the applicability of certain provisions; to provide that only membership service shall constitute creditable service except in certain circumstances; to provide for the calculation of disability and death benefits; to provide for the examination and reexamination of disability beneficiaries; to create a defined contribution plan available to such members; to define certain terms; to provide for employer and employee contributions; to provide for vesting; to provide for forfeiture; to provide for administration; to amend Code Section 47-19-10 of the Official Code of Georgia Annotated, relating to directors of the State Employees' Assurance Department, establishment of retired and vested inactive members trust fund, establishment of active members fund, management of assets, and contributions irrevocable, so as to provide that such funds may not be expended for any purpose other than the provision of survivors benefit coverage; to amend Article 4 of Chapter 23 of Title 47 of the Official Code of Georgia Annotated, relating to service creditable under the Georgia Judicial Retirement System, so as to provide that a superior court judge or district attorney who is an active member of the Georgia Judicial Retirement System may obtain creditable service for certain prior service as a circuit-paid assistant district attorney; to provide for application and payment of the full actuarial value of such service; to provide conditions and limitations; to provide for related matters; to provide conditions for an effective date and automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 47 of the Official Code of Georgia Annotated, relating to the Employees' Retirement System of Georgia, is amended by adding a new article to read as follows:

"ARTICLE 10

47-2-350.

This article shall be known and may be cited as the 'Georgia State Employees' Pension and Savings Plan.'

47-2-351.

(a) Except where indicated clearly to the contrary by the context, the word 'member' as used in this article shall mean any employee who first or again becomes a member of the Employees' Retirement System of Georgia on or after January 1, 2009. From and after January 1, 2009, every person first or again becoming an employee entitled to a new membership in the Employees' Retirement System of Georgia shall become a member subject to this article. Any provision of this chapter providing that a class of employees shall be subject to Code Section 47-2-334 shall be deemed to have been amended by this subsection.

(b) Membership under this article shall be optional for any persons who are within the membership of the Employees' Retirement System of Georgia on December 31, 2008. Any such persons may elect in writing on a form to be provided by the board of trustees to become a member subject to this article at any time on or after January 1, 2009. This written election shall become effective upon the approval of the application by the board of trustees as provided in rules and regulations promulgated by the board of trustees and shall be final and cannot be later changed or rescinded. Upon such election, a member shall be subject to all the provisions, terms, and conditions of this article; provided, however, that the calculation to determine retirement allowances for any person exercising such option shall be made as follows:

(1) The retirement allowance shall be computed fully as if all creditable service of the member were acquired and calculated under the provisions of this article;

- (2) Then the retirement allowance shall also be computed fully as if all creditable service of the member were acquired and calculated under the provisions of this chapter contained other than in this article and the rules and regulations of the board of trustees;
- (3) Then a benefit amount shall be determined based upon a fractional part of each retirement allowance computed in paragraphs (1) and (2) of this subsection, which fractional part shall be computed by using the actual years of creditable service established under either this article, for paragraph (1) of this subsection, or the provisions of this chapter contained other than in this article, for paragraph (2) of this subsection, which number of years shall be the numerator of the fraction, over the total actual years of creditable service established under both this article and the provisions of this chapter contained other than in this article, which number shall be the denominator of the fraction;
- (4) The two benefit amounts so determined shall then be added together to produce the actual retirement allowance; and
- (5) Projected years of service shall not be used in the computation of the retirement allowances under this subsection.

47-2-352.

- (a) Every member subject to this article shall contribute employee membership contributions in an amount equal to 1 1/4 percent of earnable compensation, which shall be deducted by each employer from the earnable compensation of each member for each and every payroll period and paid monthly to the board of trustees. Such amount shall be credited to the individual accounts of the members in the annuity savings fund.
- (b) From and after January 1, 2009, each employer shall pay monthly to the board of trustees, on behalf of each member subject to this article, the aggregate of employer and employee contributions required by this chapter. With respect to members subject to this article, no employer contributions shall be considered as accumulated contributions of the member and none shall be eligible for withdrawal by the member upon cessation of state service. Such amount shall be credited to the pension accumulation fund.

47-2-353.

Every member subject to this article shall, upon becoming eligible under the provisions of this chapter, be entitled to a service retirement allowance, which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

(2) A monthly pension which, together with the annuity, shall provide a total retirement allowance equal to 1.0 percent, or such future amount up to 2 percent to be set by the board of trustees in direct relation to any increased appropriations provided by the General Assembly expressly for such increase, of the member's highest average monthly earnable compensation during a period of 24 consecutive calendar months while a member of the retirement system, multiplied by the number of the member's years of creditable service.

47-2-354.

(a) Members subject to this article shall be subject to the following conditions:

(1) The following provisions shall not be applicable to members subject to this article:

- (A) Subsection (d) of Code Section 47-2-120;
- (B) Paragraph (1) of subsection (c) of Code Section 47-2-123;
- (C) Code Section 47-2-124; and
- (D) Code Section 47-2-334;

(2) Except as provided in Chapter 1 of this title and in Code Sections 47-2-99 and 47-2-100, no service shall constitute creditable service except membership service for which the full rate of employee membership contributions and employer contributions is made pursuant to Code Section 47-2-352. The provisions of this paragraph shall not affect the transfer of creditable service between public retirement systems created by this title under such conditions as are now or may hereafter be provided by law;

(3) The provisions of Code Section 47-2-91 shall be applicable to members subject to this article; provided, however, that such benefits shall be subject to reduction or repeal by subsequent legislation and shall not be considered an element of any contract of employment;

(4) Disability benefits shall be calculated as provided in paragraph (2) of subsection (c) of Code Section 47-2-123; provided, however, that the disability benefits of persons entitled to the provisions of Code Section 47-2-221 shall be calculated as provided in such Code section but with the benefit computed on 1 percent of the member's monthly earnable compensation;

(5) Members subject to the provisions of this article shall not be entitled to group term life insurance coverage pursuant to Code Section 47-2-128 or 47-2-129;

(6) Members subject to Code Section 47-2-244 shall be entitled to the provisions of such Code section; and

(7) Members subject to the provisions of Code Section 47-2-223 or 47-2-224 shall be entitled to retire as provided in subsection (b) of each such Code section but shall receive a monthly benefit based on 1 percent of his or her highest average compensation rather than the percentage stated in such subsections.

(b) All members subject to this article shall have and be subject to all other rights, privileges, obligations, and duties specified by other provisions of this chapter, and all such other provisions shall be of full force and effect with respect to any matter not specifically provided for in this article.

47-2-355.

(a)(1) Subject to the provisions of paragraphs (2) through (5) of this subsection, any member in service who has at least 15 years of creditable service who become disabled in service before becoming eligible to receive a service retirement allowance may be retired on a disability allowance by the board of trustees, upon written application to the board of trustees by the member or his or her employer and upon certification by the medical board that he or she is medically or physically incapable of further performance of his or her duties in the position he or she held at the time his or her disability originated, that incapacity is likely to be permanent, and that he or she should be retired; provided, however, that the medical board shall not consider any evidence of such disability which is not submitted within 12 months after the date the member submits his or her first application for a disability retirement. The board of trustees may retire such member not less than 30 days nor more than 90 days after execution and filing of the written application.

(2) A member making application for a disability retirement pursuant to paragraph (1) of this subsection shall at the same time submit a copy of such application together with any supporting documentation accompanying such application to his or her employing agency. The member shall thereafter provide the employing agency with any additional information or documentation which he or she submits to the board of trustees in conjunction with such application.

(3) After receipt of the notice provided for in paragraph (2) of this subsection, the head of the member's agency or his or her designee shall conduct an interview with the member applying for disability retirement; provided, however, that any designee of the head of an agency shall be an official at such agency who is above the level of the applicant's immediate supervisor and who has the authority to make job assignment decisions. The interview shall be held within ten business days after receipt of such

notice. Based on the interview and information received by the agency pursuant to paragraph (2) of this subsection, the agency head or his or her designee shall determine if an alternative position is available for the member which meets the following requirements:

- (A) The physical requirements for such position are compatible with the member's physical limitations;
- (B) The annual compensation and possibility for future advancement for such position shall be the same as or greater than that of the current position of the member;
- (C) The duties for such position shall be reasonably compatible with the experience and educational qualifications of the member;
- (D) The position shall be one which includes the holder thereof as a member of the retirement system provided for by this chapter; and
- (E) The position must be available for acceptance by the member and an offer of the position to the official or member must be made, in writing, by not later than 45 days after the member submitted his or her application for a disability retirement.

An agency making an offer of alternative employment as provided in this paragraph shall so notify the board of trustees within 45 days after the member submitted his or her application for a disability retirement. After receipt of such notice, the board of trustees shall not approve a disability retirement until the procedures of paragraph (4) of this subsection are resolved.

(4) Any member applying for a disability retirement who is offered a position of employment in conformity with the requirements of paragraph (3) of this subsection shall accept the offer or dispute his or her ability to perform the tasks required by the position offered by submitting a written appeal to the agency and to the board of trustees within 30 days after receiving the offer. In the event of an appeal, the agency shall promptly submit to the medical board a detailed description of the requirements of the position offered and the medical board shall determine, based upon all information available to it, whether the member is reasonably capable of performing such tasks. The decision of the medical board shall be final. If the medical board determines that the member is unable to perform the tasks required either by the position held at the time of the application for a disability retirement or the position offered, the member shall be placed on disability retirement immediately.

(5) A member who refuses to accept a position offered or file an appeal in a timely manner or who refuses to accept a position which the medical board has determined on

appeal that he or she is capable of performing shall not be eligible to receive a disability retirement under this subsection.

(b) Any member who has at least 15 years of creditable service and who becomes disabled in service before becoming eligible to receive a service retirement allowance shall be eligible to retire forthwith without regard to age and to receive the equivalent of a service retirement allowance calculated upon the number of years of creditable service attained to the date of retirement and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system. No member who is eligible to receive a service retirement benefit shall be eligible to apply for or receive a disability benefit.

(c)(1) Once each year during the first five years following the retirement of a member on a disability retirement allowance and once in every three-year period thereafter, the board of trustees may require a disability beneficiary who has not yet attained retirement age as specified in subsection (a) of Code Section 47-2-110 to undergo a medical examination, such examination to be made at a place designated by the board, by physicians designated by the medical board. The disability beneficiary may request such an examination. Should any disability beneficiary who has not yet attained retirement age refuse to submit to such medical examination, the pension of such disability beneficiary may be discontinued by the board of trustees until the withdrawal of such refusal; and should the refusal continue for one year, all rights of the disability beneficiary in and to a pension may be revoked by the board of trustees. Should the medical board report and certify to the board of trustees that a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between the disability beneficiary's retirement allowance and the earnable compensation used to calculate the disability retirement allowance at the time of retirement, the board of trustees may reduce the disability beneficiary's pension to an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement. Should the disability beneficiary's earning capacity be later changed, the amount of the pension may be further modified, provided that the modified pension shall not exceed an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement.

(2) The board of trustees may require a disability beneficiary who has not yet attained retirement age as specified in subsection (a) of Code Section 47-2-110 to provide information relevant to any provision of this chapter relating to his or her entitlement to receive a disability retirement. Should any disability beneficiary who has not yet attained retirement age refuse to submit any such information so requested, the board of trustees may suspend the retirement allowance of such disability beneficiary until such information is provided. Should the board of trustees receive information from any source that a disability beneficiary is engaged in an occupation paying more than the difference between the disability beneficiary's retirement allowance and the earnable compensation used to calculate the disability retirement allowance at the time of retirement, the board of trustees may reduce the disability beneficiary's pension to an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement. Should the disability beneficiary's earnings later be changed, the amount of the pension may be further modified, provided that the modified pension shall not exceed an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement.

47-2-356.

(a) Any member who has at least 15 years of creditable service and who dies in service before becoming eligible for a service retirement shall be eligible to retire forthwith without regard to age and to receive the equivalent of a service retirement allowance calculated upon the number of years of creditable service attained to the date of retirement and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system. Any member who dies in service after becoming eligible for a service retirement shall be eligible to retire forthwith to receive a service retirement allowance.

(b) In the application of this subsection to death allowances, computations of retirement allowances shall be made on the same basis as though option two had been in effect. In lieu of the amount of death allowance otherwise payable to the beneficiary under option two, the member, upon written request, may at any time elect a reduced level death allowance of equivalent actuarial value, which allowance is payable to the beneficiary during a period of years certain or to the estate of the beneficiary and during the lifetime

of such named beneficiary thereafter. At the election of the member, in case of death of the beneficiary during a term of years certain, the balance of the years certain payments may be paid to the estate of the member; but if such beneficiary predeceases the member, the total amount of the member's contributions to the date of his or her death shall be payable to the member's estate. The method of determining the equivalent actuarial value shall be consistent with the actuarial method of determining the beneficiary's death allowance under option two.

47-2-357.

(a) As used in this Code section, the term:

(1) '401(k)' means the deferred compensation plan offered by the state for public employees pursuant to Article 3 of Chapter 18 of Title 45 utilizing Section 401(k) of the federal Internal Revenue Code.

(2) 'Plan' means the employee savings plan created by this article.

(b) Each member shall, at the time of becoming a member, be automatically enrolled in the plan; provided, however, that the member shall have a period of 90 days from the date of enrollment to withdraw from the plan. Such withdrawal shall be made in writing to the board of trustees in such form as the board prescribes and any employee account balance shall be returned to the member. Thereafter, participation in the plan shall be voluntary. The member may not withdraw from the plan so long as he or she remains eligible to participate in the 401(k) plan offered by the state. Members shall be entitled to an employer contribution as follows:

(1) For each pay period, each member shall contribute 1 percent of his or her compensation into his or her 401(k) account and the employer shall contribute an equal amount into his or her 401(k) account;

(2) After the 1 percent level provided for in paragraph (1) of this subsection has been met, the employer shall contribute an amount equal to 50 percent of such amount as the member chooses to contribute, up to an additional 2 percent of the member's compensation; and

(3) The member may make such additional contributions as he or she wishes, subject to limitations imposed by federal law.

(4) The board of trustees shall apportion the costs of administering the plan among the employers and members on the basis of the normal costs of administration against any special services requested by any member.

(c) All contributions by participating members are 100 percent vested and shall be maintained in an account and invested based on the participant’s investment allocation choices. All employer contributed amounts credited to a member’s account shall be maintained as a matching contribution subaccount and invested based on the participant’s investment allocation choices. Any and all amounts credited to a member’s matching contribution subaccount, including applicable earnings and investment appreciation or depreciation, shall become vested and nonforfeitable based on the number of employment service years completed and in accordance with the vesting schedule set forth below:

Years of Service	Employer Nonforfeitable Vested Percentage
1	20
2	40
3	60
4	80
5	100

Upon separation from service for greater than 31 days, the portion of such matching contribution subaccount not so vested shall be transferred from the member’s account into a temporary plan forfeiture accumulation account for future disposition as determined by the board of trustees. A break in service less than 32 days shall not affect vesting rights.

(d) Members electing to be governed by the provisions of this article pursuant to subsection (b) of Code Section 47-2-351 shall use their date of election as the beginning date for purposes of calculating their vesting service for the employer contribution as provided in subsection (c) of this Code section used to calculate the vesting requirements of subsection (c) of this Code section, except that service as provided under Code Section 47-2-91 shall not constitute creditable service for this purpose.

47-2-358.

This article shall not be construed and is not intended to have any effect whatsoever on persons within the membership of the Employees’ Retirement System of Georgia on December 31, 2008, who do not elect in writing to become members subject to this article.

47-2-359.

The provisions of this article shall control over conflicting or inconsistent provisions of this chapter or any other law of this state. It is the intention of the General Assembly that this article has not been and may not be repealed, superseded, or modified by implication

through the enactment of any other law or through the amendment of any other provision of this chapter or any other existing law, and any modification or repeal of any provision of this article may be accomplished only by reference or amendment to or repeal of this specific article.

47-2-360.

The board of trustees shall have the responsibility of administering the provisions of this article and shall promulgate such rules and regulations as are necessary to carry out the provisions of this article."

SECTION 2.

Code Section 47-19-10 of the Official Code of Georgia Annotated, relating to directors of the State Employees' Assurance Department, establishment of retired and vested inactive members trust fund, establishment of active members fund, management of assets, and contributions irrevocable, is amended by adding a new subsection to read as follows:

"(f) No moneys in either the retired and vested inactive members trust fund or the active members fund established by subsection (b) of this Code section shall transferred or be expended for any purpose other than the payment of benefits and expenses necessary for the maintaining of survivors benefit coverage prior to July 1, 2009, without express legislative enactment."

SECTION 3.

Article 4 of Chapter 23 of Title 47 of the Official Code of Georgia Annotated, relating to service creditable under the Georgia Judicial Retirement System, is amended by adding a new Code section to read as follows:

"47-23-65.

Any superior court judge or district attorney who is an active member of this retirement system may receive up to five years of creditable service for his or her past service as a circuit-paid assistant district attorney who was not eligible to participate in a local retirement plan upon payment to the board of trustees of an amount which will allow such creditable service without creating any accrued actuarial unfunded liability as to this retirement system. Any member desiring such creditable service shall make application to the board of trustees in such form as the board deems appropriate, provide such proof of eligible prior service as the board deems necessary, and make full payment not later than December 31, 2008, or within six months of first or again becoming a member, whichever

is later. No creditable service shall be allowed under this Code section for any period of employment for which creditable service is allowed under any provision of any other retirement or pension system of this state or of any political subdivision of this state."

SECTION 4.

This Act shall become effective on July 1, 2008, only if it is determined to have been concurrently funded as provided in Chapter 20 of Title 47 of the Official Code of Georgia Annotated, the "Public Retirement Systems Standards Law"; otherwise, this Act shall not become effective and shall be automatically repealed in its entirety on July 1, 2008, as required by subsection (a) of Code Section 47-20-50.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.